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Acting Under Authority Conferred By 28 U.S.C. § 515

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA,	)	Case No. 18-CR-00258 EJD
	)	
Plaintiff,	)	DECLARATION OF JOHN BOSTIC IN SUPPORT
	)	OF UNITED STATES' MOTION FOR ORDER
v.	)	THAT DEFENDANTS LACK INDIVIDUAL
	)	PRIVILEGE INTEREST IN THERANOS
ELIZABETH HOLMES and RAMESH	)	CORPORATE DOCUMENTS
"SUNNY" BALWANI,	)	
	)	Date: December 14, 2020
Defendants.	)	Time: 1:30 p.m.
	)	Court: Hon Edward J. Davila

I, JOHN BOSTIC, declare as follows:

1. I am an Assistant United States Attorney, representing the United States in the above-captioned matter. I am admitted to practice before this Court. I hereby attest to the following facts.
2. After the Magistrate Judge issued an Order on Defendant's motion regarding the government's use of the grand jury in this investigation, the government formed a taint team to review approximately 274,000 documents received from Theranos before it ceased operations in 2018. The taint team's review of those materials uncovered approximately twenty-five documents possibly subject

1 to a colorable claim of individual privilege by Holmes or Balwani.

2       3.       In the government's continuing investigation, it has been working with counsel  
3 representing the Theranos Assignee on any issues involving the corporate privilege previously held by  
4 Theranos. Counsel for the Assignee has expressly waived any privilege as to certain documents, and has  
5 informed the government of its position on those documents. The government has informed the defense  
6 of any express privilege waivers by the Assignee, and has offered to continue to do so. Holmes's  
7 counsel has objected to the government's approach.

8       4.       I understand that the vast majority, if not all, of the documents identified in Holmes's  
9 July 30, 2020 letter and in her November 4, 2020 privilege log were originally produced by Theranos in  
10 connection with a lawsuit brought against the company by investor Partner Fund Management. Those  
11 documents were later provided to the SEC by Theranos during that agency's investigation. In 2017,  
12 SEC shared the documents with the government, and Theranos produced alternative copies of the same  
13 materials directly to the government. The government produced these documents to Holmes and  
14 Balwani in October and November 2018.

15       5.       Attached as **Exhibit A** is a true and correct copy of a creditor notice related to a General  
16 Assignment for the Benefit of Creditors in connection with the shuttering of Theranos.

17       6.       Attached as **Exhibit B** is a true and correct copy of a letter dated February 14, 2019 from  
18 Holmes's counsel to the government.

19       7.       Attached as **Exhibit C** is a true and correct copy of a letter dated March 1, 2019 from  
20 government counsel to Holmes's counsel.

21       8.       Attached as **Exhibit D** is a true and correct copy of a letter dated March 21, 2019 from  
22 Holmes's counsel to the government, including two attachments. Attachment A appears to be an email  
23 chain between counsel for Holmes and a representative of Boies Schiller and Flexner, in which the  
24 firm's representative informs Holmes's counsel that the firm represented Theranos the company and not  
25 Holmes as an individual.

26       9.       Attached as **Exhibit E** is a true and correct copy of letter dated July 30, 2020 from  
27 Holmes's counsel to the government.

28       10.      Attached as **Exhibit F** is a true and correct copy of a letter dated August 6, 2020 from

1 government counsel to Holmes's counsel.

2 11. Attached as **Exhibit G** is a true and correct copy of a letter dated August 11, 2020 from  
3 Holmes's counsel to the government.

4 12. Attached as **Exhibit H** is a true and correct copy of a letter dated September 22, 2020  
5 from Holmes's counsel to the government.

6 13. Attached as **Exhibit I** is a true and correct copy of a letter dated October 28, 2020 from  
7 government counsel to Holmes's counsel.

8 14. Attached as **Exhibit J** is a true and correct copy of a November 4, 2020 letter from  
9 Holmes's counsel to the government.

10 15. Attached as **Exhibit K** is a true and correct copy of a privilege log provided to the  
11 government by Holmes's counsel on November 4, 2020.

12  
13 I declare under penalty of perjury under the laws of the United States that the foregoing is true and  
14 correct to the best of my knowledge.

15 Executed this 20th day of November, 2020.

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18 /s/  
19 JOHN C. BOSTIC  
20 Assistant United States Attorney  
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